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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,401

05/18/2005

Tamco Kawakami

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
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EXAMINER

MCDONOUGH, JAMES E

ART UNIT

PAPER NUMBER

1755

NOTIFICATION DATE

DELIVERY MODE

07/13/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/535,401	Applicant(s) KAWAKAMI ET AL.	
	Examiner James E. McDonough	Art Unit 1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 10-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/18/2005 and 3/24/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's election with traverse of restriction in the reply filed on 5/24/2007 is acknowledged. The traversal is on the ground(s) that search of all groups would not present an undue burden. This is not found persuasive because the groups have acquired different class/subclass designations.

The requirement is still deemed proper and is therefore made FINAL.

Applicants' argument against the election of species is found persuasive. The requirement for the election of species has therefore been withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation on the tank pressure is indefinite because this would change depending on the amount of gas generant used, the volume of the container, and the final temperature of the gas, none of which is claimed.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamato et al. (JP-10-087390).

Regarding claim 1 Yamato et al. teaches a non-azide gas generating composition comprising a molded tubular article, that is cut to size (see figure one and paragraphs 0035 and 039).

Although, Yamato et al. does not explicitly disclose the squashing of both ends of the formed article, Yamato et al. do disclose the rest of the limitations of the claims. However, because the skilled artisan would appreciate that cutting the extruded tube before it is dry, while it is still semi-solid and pliable, would necessarily squash both ends by applying two forces to the outside of the tube, it would have been prima facie obvious to someone of ordinary skill in the art at the time the invention was made to

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modify the teachings of Yamato et al., by squashing both ends of the extruded article by cutting the tube into lengths of desired size.

Regarding claim 2 Yamato et al. teaches a gas generating agent that has an outer diameter of 1.5-3, an inner diameter of 0.56-0.8 mm, and a length of 0.5-5 mm (paragraph 0040).

Regarding claim 3 The tank maximum pressure is considered to be an inherent property. See MPEP 2112 [R-3].

The express, implicit, and inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. 102 or 103. "The inherent teaching of a prior art reference, a question of fact, arises both in the context of anticipation and obviousness." *In re Napier*, 55 F.3d 610, 613, 34 USPQ2d 1782, 1784 (Fed. Cir. 1995) (affirmed a 35 U.S.C. 103 rejection based in part on inherent disclosure in one of the references). See also *In re Grasselli*, 713 F.2d 731, 739, 218 USPQ 769, 775 (Fed. Cir. 1983).

Regarding claim 4 The time from start up until the attainment of maximum pressure and the shape of the pressure-time curve are considered to be inherent properties. See MPEP 2112 [R-3].

The express, implicit, and inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. 102 or 103. "The inherent teaching of a prior art reference, a question of fact, arises both in the context of anticipation and obviousness." *In re Napier*, 55 F.3d 610, 613, 34 USPQ2d 1782, 1784 (Fed. Cir. 1995) (affirmed a 35 U.S.C. 103 rejection based in part on inherent disclosure in one of the references). See also *In re Grasselli*, 713 F.2d 731, 739, 218 USPQ 769, 775 (Fed. Cir. 1983).

Regarding claims 5-7 Yamato et al. teaches a gas generating composition comprising 25-60% nitrogen containing organic compound, 40-65% of an oxidizing agent, 1-20% of a slag formation agent, and 3-12 % water soluble binder (claim 27).

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Yamato et al. further teaches that nitroguanidine is the nitrogen compound, strontium nitrate is the oxidizer, acid clay is the slag formation agent, and the binder is selected from a carboxymethyl cellulose (claim 8) and polysaccharide derivatives (claim 22).

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamato et al. (JP-10/087390) as applied to claim 1-7 above, and further in view of Kodama et al. (US 2005/0162607).

Although, Yamato et al. does not explicitly call for the use of hydroxypropyl methyl cellulose, Yamato et al. does teach the rest of the limitations of the instant claims, and teaches the use of polysaccharide derivatives and carboxymethyl celluloses as the binder, of which, hydroxypropyl methyl cellulose falls into both of these classes of binders. However, because Kodama et al. teaches the use of binders being derivatives of polysaccharides such as carboxymethyl cellulose and hydroxypropyl methylcellulose are conventional in gas generators (paragraph 0029), it would have been prima facie obvious to someone of ordinary skill in the art at the time the invention was made to modify the teachings of Yamato et al., by using hydroxypropyl methylcellulose as the binder, as suggested by Kodama et al..

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James E. McDonough whose telephone number is (571)272-6398. The examiner can normally be reached on 8:30am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on (571)272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JEM 6/12/2007


J.A. LORENGO
SUPERVISORY PATENT EXAMINER